YAP CHENG KEE & ANOR. v. OW GIAM ENG & ANOR.

[A.C.J. (Wan Suleiman F.J.) August 20, 1974]
[Seremban — Civil Appeal No. 6 of 1971]

Landlord and Tenant — Statutory tenant — Death of statutory tenant — Whether family of deceased statutory tenant entitled to remain on premises — Control of Rent Ordinance, 1956, s. 12(1)(i).

The respondent's predecessor in title had instituted ejectment proceedings against the tenant of the premises. The application had been dismissed with the result that the tenant became a statutory tenant. The tenant subsequently died and the respondents thereupon served a notice to quit on the appellants, the administrators of the estate of the deceased tenant and brought an action for recovery of vacant possession. The learned magistrate gave judgment for the respondents. The appellants appealed.

Held, dismissing the appeal: the learned magistrate was correct in holding that a statutory tenant had only a personal right so that on his death the tenancy did not pass to anyone.

Tan Khio Soei & Anor. v. *Ban Hin Lee Bank Ltd.*(4) applied. *Hoo Yan Meng* v. *Esah*(8) not followed.

Cases referred to:-

(1) *Ayyar* v. *Parameswara* [1953] M.L.J. 102, 103.
(2) *Che Esah & Anor.* v. *Che Limah* [1966] 1 M.L.J. 36.
(3) *State of Perak* v. *P.R.A.L.M.M. Muthukarauppan Chettiar* [1938] M.L.J. 247, 256.
(4) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.
(5) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105, 106.
(6) *Keeves* v. *Dean* [1924] 1 K.B. 685, 690.
(7) *John Lovibond & Sons Ltd.* v. *Vincent* [1929] 1 K.B. 687.
(8) *Hoo Yan Meng* v. *Esah* [1970] 1 M.L.J. 126.

CIVIL APPEAL.

Khaw Yew Mei (Miss) for the appellants.

Atma Singh Gill for the respondents.

Wan Suleiman F.J.: The respondents in this appeal, the plaintiffs in the court below, are the registered proprietors of premises No. 11, Main Road, Bahau, and the appellants, who were the defendants in that action, are the administrators of the Estate of Yap Boot alias Yap Eng Kee (hereinafter to be referred to as the deceased), in which capacity they were sued.

The respondents' predecessor in title had let the premises to the deceased on certain financial terms not material for the purposes of this appeal.

On 29th November 1947 respondents' predecessor in title instituted ejectment proceedings against the deceased (see Exhibit "A") and on 19th December 1947 the application was dismissed. The respondents therefore claim that deceased thereby became a statutory tenant.

Deceased died intestate on 22nd July 1966 and appellants extracted Grant of Letters of Administration on 3rd July 1967.

Respondents then served upon the appellants a notice to quit dated 2nd February 1968 purporting to terminate the tenancy on 31st March 1968, and prayed *inter alia* for vacant possession of the premises.

The statement of defence was not as precise as it should be, but at the trial counsel for both parties elected not to call witnesses but to make submissions of law on the pleadings.

Because of the lack of precision in the pleadings, particularly in the statement of defence, and because of the absence of any agreed statement of facts in the Appeal Records, I had to rely only on what the learned Magistrate referred to as submission by counsel for the respondents plaintiffs and reply by counsel for the appellants.

From what the two said, neither disputing the statements of facts made by the other, the following facts appear to be not in controversy.

The premises were controlled premises, both appellants/defendants were children of the deceased tenant; the deceased left no widow (presumably she had predeceased him); that both defendants had been residing and continued to reside on the premises after his death.

On the basis of these facts what remained for the learned Magistrate to decide was whether in law, the respondent landlords were entitled to recover possession from children of a statutory tenant who had remained in possession of the premises after his death, and he held that a statutory tenant had only a personal right so that on his death the tenancy did not pass to anyone.

In the event he gave judgment for the plaintiffs/respondents.

The first ground of appeal was that the notice to quit *i.e.* the one dated 2nd February 1968 was unnecessary, if the statutory tenancy had been determined by the tenant's death. Learned counsel for the appellant seems to me to have raised a valid point. Such a notice would indeed be superfluous if the plaintiffs/respondents' main contention is determined in their favour.

The next ground of appeal was that erroneous admission by counsel on the law does not bind the parties. It should be noted that Mr. Choong Tah who represented the appellants/defendants before the Magistrate was replaced by Miss Khaw of the same firm at the appeal. My attention was drawn to the decisions in *Ayyar* v. *Parameswara,*(1) *Che Esah & Anor.* v. *Che Limah,*(2) and the *State of Perak* v. *P.R.A.L.M.M. Muthukaruppan Chettiar.*(3) It was further urged upon me that deceased was a contractual tenant.

However this is clearly not a case of erroneous admission on law but a question of fact which could readily have been proved at the hearing had not the then counsel for the defendants/respondents conceded this fact. Accordingly in exercise of the discretion given to me to receive further evidence, by section 29 of the Courts of Judicature Act read with section 69 thereof, I allowed Mr. Atma Singh to put in a certified copy of the judgment of the Rent Board Kuala Pilah dated 19th December 1947 (Exhibit "A"). The outcome of the failure of that ejectment proceedings was that the deceased became in effect a statutory tenant, though this term was not so called in the Rent and Charged Land (Restriction) Enactment, 1940, the law pertaining at that time.

Before going on any further, there is a point of law which has to be settled. The deceased died on 22nd July 1966 and the Control of Rent Act 1966 did

not come into force until 1st January 1967. Therefore I would agree with Mr. Atma Singh when he said that the 1956 Ordinance and not the 1966 Act governs the right of the parties.

We now come to the main issue *i.e.* whether the family of a deceased statutory tenant who remain in possession of the premises after his death is protected by the 1956 Ordinance.

A number of authorities were cited before me, but only two in my view are relevant for the purposes of this appeal. The first is the Federal Court decision in *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.*[4]

Since I deem the facts of great importance in order to arrive at a clear understanding of that decision, I have to set them down exactly as these appear in the judgment of Thomson L.P. (as he then was):

"The plaintiffs in this case and the respondents to the present appeal are the Ban Hin Lee Bank Limited who are the owners of premises at No. 52, Circular Road, Singapore, which consist of a ground floor and two upper floors. The first defendant and appellant is occupying the ground and first floors of the premises in question and the second defendant, who is not an appellant, and the third defendant, who has appealed, are the administrators of the estate of one K. Shaik Abdul Kader who died intestate in India on 24th August, 1947, and who carried on business on the ground floor and until 1941 resided with his assistants on the two upper floors. The third defendant is now residing on the second floor.

The facts so far as they are now material are not in controversy.

Some time before the last war the deceased became a monthly tenant of the premises. In 1941 he went to India and did not at any time return to Singapore although a business continued to be conducted on the Circular Road premises in his name. The contractual tenancy was terminated by a notice to quit which expired on 31st October, 1946, and the Bank then commenced proceedings to obtain possession on the ground that they required the premises for their own use. The proceedings were unsuccessful and rent continued to be paid and accepted in the name of Shaik Abdul Kader.

After Shaik Abdul Kader's death, which did not become known to the Bank until some time in 1960, his business was carried on by one M. M. Ali who was granted Letters of Administration to the estate of the deceased on 5th April, 1948. Some time in 1948 the third defendant, the third son of the deceased, who was then a boy of 17, came to Singapore from India for the first time in his life. Since then he has lived part of the time in India and part of the time in Singapore and when in Singapore he has resided on the premises.

Then in 1960 a number of things happened. At a date which is in dispute but is not very material the Bank learned for the first time that the deceased had died in 1947. On 25th May the third defendant and the second defendant, who is his brother, obtained an order from the Court revoking the grant of administration in favour of M. M. Ali and making a grant in their own favour jointly. On 1st November, when he knew that the present proceedings were about to be commenced the third defendant purported to sublet the ground and first (floors) of the premises to the first defendant who went into occupation. And finally, on 11th November, the Bank issued the writ in these proceedings in which they claimed against all three defendants an injunction and damages for trespass, a declaration that the right title and interest of K. Shaik Abdul Kader terminated on his death in 1947 and possession of the premises."

Buttrose J. held that his only right as a statutory tenant was a personal right to possession of the premises, and was extinguished on and by his death and did not pass on to his estate.

Against this decision the first and third defendants appealed.

Thomson L.P. referred to his earlier decision in the Federation case of *Ramasamy Pillai* v. *Meyappa Chettiar*[5] in which he said: —

"before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:—

(a) he must have been a tenant of the premises;
(b) his tenancy must have been determined, not assigned or anything of that sort;
(c) he must have remained in possession of the premises after the determination of his tenancy; and
(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises."

His Lordship went on to say that once such a person ceases to fulfil one of the four conditions his tenancy ceases to be a statutory one, and section 28(b) has no application because it only applies to statutory tenancies.

His Lordship added that there is no difference between a statutory tenant under our legislation and a statutory tenant under the English Rent Acts, and cited with approval two English cases which describe the position of such a person.

In *Keeves* v. *Dean*,[6] Bankes L.J. said of a statutory tenant — "His right is a purely personal one, and as such, unless the statute expressly authorises him to pass it on to another person, must cease the moment he parts with possession or dies."

In *John Lovibond & Sons Ltd.* v. *Vincent*,[7] it was held, applying the principle in *Keeves* v. *Dean* that the right of a statutory tenant is a purely personal right and cannot be transmitted by will.

His Lordship therefore held that in the circumstances "no right of any sort in respect of the premises occupied by Shaik Abdul Kader passed to . . . his family or to his personal representative or to anybody else . . ." and dismissed the appeal.

In *Hoo Yan Meng* v. *Esah*[8] the only question for decision was whether a member of a deceased statutory tenant's family was protected under section 16(c) of the Singapore Control of Rent Ordinance (Cap. 242).

Winslow J. held that a member of the family of a deceased tenant whether contractual or statutory enjoys protection under section 16(c) of the said Ordinance but does not by virtue of this protection acquire any sort of tenancy. The Ordinance compels the landlord, his Lordship held, to recognize a right on the part of such person to quiet enjoyment and added that he may be described as a "compulsory quasi-tenant".

The Federal Court decision of *Tan Khio Soei & Anor.* v. *Ban Bin Lee Bank Ltd.* was distinguished. The learned judge remarked that that decision did not turn on any consideration of section 16(c) because the premises with which the Federal Court decision was concerned did not constitute "domestic premises".

Section 16(c) of the Singapore Ordinance reads as follows: —

"16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Ordinance may without prejudice to the provisions of section 15 be made in any of the following additional cases namely:—

(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

Under section 14 of the same Ordinance no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except *inter alia* in the cases set out in section 16.

If section 16(c) of the Singapore Ordinance protects the member of a deceased statutory tenant's family residing on the premises then section 12(1)(i) of our Control of Rent Ordinance 1956, which is on substantially the same terms (save that instead of domestic premises, it refers to premises generally) would accord at least similar protection.

On a careful consideration of the reasons leading up to this decision in *Tan Khio Soei's* case, however I am inclined to the view that the decision therein applies not only to business premises, but to domestic premises as well *i.e.* in short to all buildings coming within the definition of "premises". Since the statutory tenant's right is a personal one ceasing on his death, the word "tenant" in section 12(1)(i) of the 1956 Ordinance can only mean "contractual" tenant. The definition of "tenant" in section 27(1) of the Ordinance does not apply.

Accordingly, I dismissed the appeal, appellant to pay costs here and in the court below.

Appeal dismissed.

Solicitors: *Joseph & Son; Atma Singh Gill & Gill.*

THONG PUCK YENG v. LUI TAT MAN

[A.C.J. (Ibrahim J.) August 28, 1974]
[Muar — Civil Appeal No. 8 of 1973]

Landlord and Tenant — Claim for possession — Allegation that rent was in arrears — Demand for rent — Whether should be made at premises — Control of Rent Act, 1966, s. 16(1).

This was an appeal against the decision of the learned magistrate giving vacant possession of the premises in question to the respondent. The learned magistrate had held that the rent of the premises was due on the 10th of the following month and that the respondent had demanded the rent after that date. It appeared that the demand was made not at the premises but at the appellant's adjoining medicine shop.

Held: (1) in the absence of a fixed period, the rent would be due at the end of each period of a periodic tenancy and the learned magistrate was wrong in holding, in the absence of any agreement to that effect, that the rent was due on the 10th of the following month. The erroneous finding of the learned magistrate on this point however could not upset his decision as a whole;

(2) demand for rent should, in the absence of agreement to the contrary, be made at the premises before rent could be said to be lawfully in arrear and as the demand in this case was not made at the premises and there was no agreement for demand elsewhere, the rent was not lawfully in arrears, and the learned magistrate was wrong in deciding that the notice to quit was good in law.

Cases referred to:-

(1) *Penang Motors (1950) Ltd.* v. *Suah Motors* [1959] M.L.J. 133.

(2) *Chop Lean Yak* v. *Ng Ah Hee* [1953] M.L.J. 6.

CIVIL APPEAL.

Elyas Majeed for the appellant.

F. H. D'Cruz for the respondent.

Ibrahim J.: This is an appeal against the whole of the decision of the learned Magistrate who on 3rd April 1973 ordered the appellant (defendant/tenant) to quit and deliver up to the respondent (plaintiff/landlord) vacant possession of the premises known as No. 5 Jalan Leong Yong, Segamat, Johore, such delivery to be effected within 3 months from the date of the Order, etc.

The respondent had based his claim on the following grounds under section 16(1) of the Control of Rent Act, 1966: —

(1) The rent lawfully due was in arrear for 14 days or upwards (as per section 16(1)(a)).

(2) Neither the tenant nor any member of his family was personally in occupation (as per section 16(1)(i)).

(3) The tenant, in breach of the tenancy agreement, was using the premises for purposes other than those for which it had been let (as per section 16(1)(l)).

The learned Magistrate decided that the respondent had failed in his claim on grounds (2) and (3) but had succeeded on ground (1).

The premises were originally let out by the respondent to the appellant's father many years ago. There was no agreement in respect of the time for payment of the monthly rent but the appellant's father used to pay it on or about the 1st of each month. When the appellant's father died more than 20 years ago the appellant took over the tenancy and though there was also no agreement in respect thereof he always paid the monthly rent late, usually on the 16th/17th of the following month and sometimes even later than that. On 4th April 1972 the respondent's solicitors sent a Notice to Quit to the appellant for non payment of the February and March 1972 rents at the rate of $110 per month allegedly in arrears. On 6th April 1972 the appellant sent a Money Order for $220 to the respondent. On the respondent's instructions his solicitors returned the Money Order to the appellant on 8th April 1972.

According to the respondent the monthly rent should have been paid on or about the 1st of the following month and that though he had twice demanded for the February 1972 rent in March 1972 and also twice for the March 1972 rent the appellant had not paid them. He had never agreed with the appellant that payment could be made late and he had at times told the appellant not to pay it late.

The appellant alleged that because of the practice whereby the monthly rent was usually paid and accepted on the 16th/17th of the following month it only became due on those dates. He also alleged that the respondent had never come to the premises or anywhere else to demand the rents. It was contended that the Notice to Quit was therefore bad in law.

On the evidence before him the learned Magistrate found that:

(1) the monthly rent was due on the 10th of the following month, *i.e.* February 1972 rent was due on the 10th of March 1972.
and